

IT 95-70  
Tax Type: INCOME TAX  
Issue: Federal Change (Individual)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS )  
 )  
v. ) No.  
 ) SSN  
 ) TYE 1992  
XXXXX, )  
Taxpayer )  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Taxpayer appear pro se.

SYNOPSIS: The Department of Revenue issued a Notice of Deficiency plus applicable penalty on November 17, 1993, against the above named taxpayer on the assertion that an Illinois income tax return (an IL-1040) had not been filed for the 1992 tax year. Following a protest timely filed on November 22, 1993, a hearing was held. Upon consideration of the facts and evidence of record, it is recommended that the Notice be affirmed as to the deficiency but that the penalty be waived.

FINDINGS OF FACT:

1. The Department's prima facie case, consisting of the Notice of Deficiency issued November 17, 1993, containing the charges against the taxpayer, was established by admission of same into evidence as Department's exhibit No. 1.

2. The Department received data from the Internal Revenue Service as part of Federal/State informational exchange program, indicating that for the 1992 tax year the taxpayer had filed a Form 1040A relating to her federal income tax status. On the face of the form was the notation "MEMO COPY ONLY".

3. Taxpayer was not required to file a Form 1040A since her gross income for the year 1992 was less than \$5,900.00, i.e. \$5,021.00.

4. After making inquiries to the Illinois Department of Revenue, taxpayer then filed an Illinois income tax return IL-1040, bearing the notation "I do not have to file under \$5,900" on line 1 of the return. No other information was contained on the tax return.

5. On the basis of her living status, taxpayer, for the 1992 tax year, was entitled to one exemption, herself, as provided by law.

CONCLUSIONS OF LAW: Line 1 of the Illinois Income Tax Return, IL-1040, pertaining to adjusted gross income, directs the taxpayer to the U.S. 1040A, line 16. Since the taxpayer was not required to file a federal return, she mistakenly believed she was also not required to file an Illinois individual return.

In the case of an individual, base income is an amount equal to the taxpayer's federal adjusted income. It is therefore that amount which is required to be shown on Line 1 of the Illinois return irrespective of the fact that a federal return is not filed. As stated on page 5 of the General Information section of the 1992 IL-1040 booklet:

You must file Form IL-1040 if...you were not required to file a federal income tax return but your income was greater than the number of exemptions to which you are entitled times \$1,000...

Because the taxpayer's 1992 income of \$5,021.00, is greater than the \$1,000.00 exemption to which she was entitled for that year, an IL-1040 return was required as a matter of law. Accordingly, the failure to complete the return constitutes a non-filing and the tax which was required on the base income remains due and owing.

Notwithstanding the failure to file, it is clear from the facts and circumstances that this taxpayer made every effort to comply with the law but simply misunderstood the instructions given her. Therefore the penalty should be waived.

Administrative Law Judge